

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

CATHOLIC DIOCESE OF BILOXI, INC.,  
*et al.*,

Plaintiffs,

v.

SYLVIA M. BURWELL, in her official  
capacity as Secretary of the  
Department of Health and Human  
Services, *et al.*,

Defendants.

No. 1:14-cv-146

**JOINT MOTION TO STAY PROCEEDINGS**

The parties respectfully move to stay all further proceedings in this case pending the Fifth Circuit's ruling in *East Texas Baptist University v. Burwell*, No. 14-20112, *University of Dallas v. Burwell*, No. 14-10241, *Catholic Diocese of Beaumont v. Burwell*, No. 14-40212, and *Catholic Charities, Diocese of Fort Worth v. Burwell*, No. 14-10661, consolidated appeals that raise legal issues that are substantially similar to those presented in this case, with plaintiffs reserving the right to move to lift the stay in the event the grandfathered status of their health plans becomes at risk during the intervening period.

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes of its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936).

Plaintiffs challenge regulations that are currently being challenged in consolidated appeals pending in the Fifth Circuit. *See East Texas Baptist Univ. v. Burwell*, No. 14-20112 (5th Cir.); *Univ. of Dallas v. Burwell*, No. 14-10241 (5th Cir.); *Catholic Diocese of Beaumont v. Burwell*, No. 14-40212 (5th Cir.); and *Catholic Charities, Diocese of Fort Worth v. Burwell*, No. 14-10661 (5th Cir.). In these consolidated appeals, the Fifth Circuit will be addressing legal issues that are substantially similar to those presented here, involving facts that are similar to those in this case. Therefore, the Fifth Circuit's ruling is likely to have a significant effect on any proceedings in this case, and the Court and the parties will likely benefit from the Fifth Circuit's views.

If this case is not stayed, defendants will file a motion to dismiss or, in the alternative, for summary judgment. Defendants' motion would raise many of the same legal issues that are likely to be addressed by the Fifth Circuit. The parties respectfully submit that it would be inefficient, with regard to the time and resources of both the parties and of the Court, for litigation to proceed on these issues simultaneously in both courts. *See Ass'n of Irrigated Residents v. Fred Schakel Dairy*, 634 F. Supp. 2d 1081, 1094 (E.D. Cal. 2008) ("[T]he district court has broad discretion to decide whether a stay is appropriate to promote economy of time and effort for itself, for counsel, and for litigants.").

The requested stay, moreover, will prejudice neither plaintiffs nor defendants. Because plaintiffs' health care plans are grandfathered, the challenged regulations do not currently apply to them. Moreover, were plaintiffs' health care plans to lose their grandfathered status in the coming months, the challenged regulations would not apply to plaintiffs until the start of their next plan years—July 1, 2015, and October 1, 2015. *See* Compl. ¶¶ 70, 72, 74. The Fifth Circuit has set a briefing schedule in the *East Texas Baptist University* consolidated appeals whereby briefing will be completed around December 3, 2014. In any event, plaintiffs have requested that they be permitted to move to lift the stay if their plans become at risk of losing their grandfathered status. Defendants have no objection to the Court including language in the stay order that reserves the right of the

parties to request that the Court reopen district court proceedings prior to issuance of the Fifth Circuit's ruling in *East Texas Baptist University* under appropriate circumstances.

For these reasons, the parties ask this Court to stay all proceedings in this case pending resolution of the *East Texas Baptist University* consolidated appeals.<sup>1</sup>

Dated: November 7, 2014

/s/ Kevin J. Necaise

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and

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Respectfully Submitted,

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<sup>1</sup> Defendants' response to the complaint is currently due on November 17, 2014. If the Court decides to deny this joint motion for a stay, defendants respectfully request that the Court grant them an extension of time to respond to the complaint until 14 days after the Court rules on this stay motion.

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2014, I electronically filed a copy of the foregoing.  
Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Adam Grogg  
ADAM GROGG